

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 226 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GUJ. INDUSTRIAL DEVELOPMENT CORPORATION

Versus

VIJAY RE-ROLLING MILLS

Appearance:

MR SM MAZGAONKER for Petitioner

None present for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 20/02/98

ORAL JUDGMENT

The matter was called out for hearing in the first round, then in the second round and lastly in the third round, but none put appearance on behalf of the respondent. Perused the Special Civil Application and heard the learned counsel for the petitioner.

2. The petitioner, Gujarat Industrial Development

Corporation initiated action against the respondent under the provisions of the Public Premises (Eviction of Unauthorised Occupants) Act, 1972, for eviction of the respondent from the plot in dispute on the ground that it has failed to pay the dues of the Corporation to the extent of Rs.89,000/-. The competent officer passed an order on 28th May 1986, directing the respondent to vacate the premises of the Corporation on or before 16th June 1986. The respondent has not vacated the premises of the Corporation within time as granted by the competent officer and as such, the Corporation started to take steps to take possession thereof from the respondent. The Corporation thereafter took over the possession of the premises on 16.1.87 after giving notice dated 6.1.87 to the respondent. The respondent filed an appeal being Regular Civil Suit No.29 of 1987 on 16.1.87 in the Court of Assistant Judge, Mehsana, and the Assistant Judge, Mehsana, has granted exparte interim relief in its favour on the same day. That order reads as under:

"Heard Shri Shah. As, there is no time, it is not possible to take recourse to other proceedings. Therefore stay against execution of order of eviction granted till 31.1.87."

The possession of the premises in dispute has been taken over by the Corporation at about 12:30 p.m. on 16.1.87 whereas the order of interim injunction which has been granted by the Assistant Judge, Mehsana, was received by the Corporation in the evening of 16.1.87. So in this case possession has been taken before the order of the Assistant Judge was served upon the petitioner. On 17.1.87, the respondent filed another application before the Court in which he admitted as a fact that possession has been taken over by the petitioner and further prayed for passing of mandatory exparte interim order directing that the seal of the Corporation be opened and that two watchmen employed by the Corporation should be directed to be removed and the respondent should be permitted to run the factory premises. A notice of this application has been issued to the petitioner and on 20.1.87 an exparte order has been passed granting mandatory order directing the petitioner-Corporation to remove the two watchmen and to permit the petitioner to run the factory premises after removing the seal. Hence this Special Civil Application before this Court.

3. In this Special Civil Application, on 23.1.87, notice has been issued to the respondent and order has been passed to maintain status quo. The matter has been

admitted on 21.1.88 and status-quo earlier ordered was ordered to be continued and lastly on 30th March 1988, the order of status quo was confirmed.

4. The learned counsel for the petitioner is not in a position to say whether the appeal filed by respondent has been decided or not. Similarly, the learned counsel for the respondent is not present to give any assistance to the Court. It is really a sorry state of affairs that in such matter the Corporation is not in a position to say whether the appeal is decided or not. Be that as it may, the Special Civil Application has been filed against the order of the appellate Court under which interim relief has been granted and under the mandatory injunction the petitioner has been directed to remove the seal from the premises and to remove watchmen also. The possession has been taken by the petitioner legally on 16.1.87. The injunction and exparte order which has been passed in favour of the respondent has been served after the petitioner has taken the possession of the premises. Taking of possession of the premises by the petitioner has also not been disputed by the petitioner. Once the possession has been taken by the petitioner, I fail to see any propriety in the order of the Assistant Judge to grant injunction in favour of respondent. Otherwise also, for all these years, status quo order has been ordered and the learned counsel for the petitioner submits that the petitioner is in possession of the plot. In the result, this Special Civil Application is allowed and the order of the Assistant Judge, Mehsana, passed in Regular Civil Appeal No.29 of 1987, dated 20th January 1987, annexure 'C' to the Special Civil Application is quashed and set aside. Rule made absolute accordingly. No order as to costs.

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(sunil)